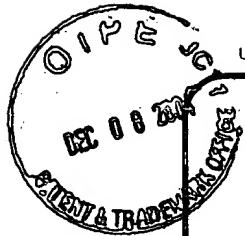


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		Application Number	09/752,712
		Filing Date	December 28, 2000
		First Named Inventor	James E. Parker
		Art Unit	1743
		Examiner Name	Samuel P. Siefke
Total Number of Pages in This Submission		Attorney Docket Number	VTECH 48514

ENCLOSURES (check all that apply)		
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FEET TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) \$170.00

Complete if Known

Application Number	09/752,712
Filing Date	December 28, 2000
First Named Inventor	James E. Parker
Examiner Name	Samuel P. Siefke
Art Unit	1743
Attorney Docket No.	VTECH-48514

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395	Utility filing fee			
1002 350	2002 175	Design filing fee			
1003 550	2003 275	Plant filing fee			
1004 790	2004 .395	Reissue filing fee			
1005 160	2005 80	Provisional filing fee			
SUBTOTAL (1) (\$)					

2. EXTRA CLAIM FEES FOR UTILITY AND

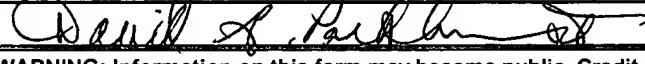
Total Claims	Extra Claims	Fee from below	Fee Paid
	-20** =	0 X _____ =	0.00
Independent Claims	- 3** =	0 X _____ =	0.00
Multiple Dependent		_____ =	

Large Entity	Small Entity	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		\$0.00

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES	Large Entity	Small Entity	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath		
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet		
1053 130	1053 130	Non - English specification		
1812 2,520	1812 2,520	For filing a request for ex parte reexamination		
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action		
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action		
1251 110	2251 55	Extension for reply within first month		
1252 430	2252 215	Extension for reply within second month		
1253 980	2253 490	Extension for reply within third month		
1254 1,530	2254 765	Extension for reply within fourth month		
1255 2,080	2255 1,040	Extension for reply within fifth month		
1401 340	2401 170	Notice of Appeal		
1402 340	2402 170	Filing a brief in support of an appeal	170.00	
1403 300	2403 150	Request for oral hearing		
1451 1,510	1451 1,510	Petition to institute a public use proceeding		
1452 110	2452 55	Petition to revive - unavoidable		
1453 1,370	2453 685	Petition to revive - unintentional		
1501 1,370	2501 685	Utility issue fee (or reissue)		
1502 490	2502 245	Design issue fee		
1503 660	2503 330	Plant issue fee		
1460 130	1460 130	Petitions to the Commissioner		
1807 50	1807 50	Processing fee under 37 CFR § 1.17(q)		
1806 180	1806 180	Submission of Information Disclosure Statement		
8021 40	8021 40	Recording each patent assignment per property (times number of properties)		
1809 790	2809 395	Filing a submission after final rejection (37 CFR § 1.129(a))		
1810 790	2810 395	For each additional invention to be examined (37 CFR § 1.129(b))		
1801 790	2801 395	Request for Continued Examination (RCE)		
1802 900	1802 900	Request for expedited examination of a design application		
Other fee (specify)				
*Reduced by Basic Filing Fee Paid			SUBTOTAL (3) (\$)	\$170.00

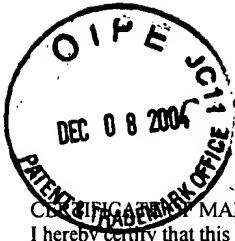
SUBMITTED BY

Name (Print/Type)	David G. Parkhurst	Registration No. (Attorney/Agent)	Telephone	310-824-5555
Signature			Date	December 2, 2004

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

JAMES E. PARKER

Serial No. 09/752,712

Filed: December 28, 2000

For: DRUG TEST KIT

Examiner: Samuel P. Siefke

Group Art Unit: 1743

Docket No.: VTECH-48514

December 2, 2004

Los Angeles, California 90045

APPEAL BRIEF

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A Notice of Appeal was filed on October 4, 2004, from the final rejection dated June 2, 2004 and the Advisory Action dated August 30, 2004 finally rejecting claims 1-6 and 9-13. The two month deadline from the Notice of appeal date is December 4, 2004, and this Appeal Brief is being filed within the term provided as permitted under 37 C.F.R. § 1.192(a).

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I. REAL PARTY IN INTEREST

The real party in interest is MODERN OPTICS, INC. This application was assigned by the inventor, JAMES E. PARKER to MODERN OPTICS, INC., by an assignment executed December 5, 2000, which was recorded by the Patent Office on December 28, 2000, at reel 011703, frame 0977.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 15-16, 18, 20, 21 and 23 remain pending, and were finally rejected in an Office Action dated June 2, 2004, and in the Advisory Action of August 30, 2004.

IV. STATUS OF AMENDMENTS

The claims were most recently amended in the Amendment of March 11, 2004, which was entered.

V. SUMMARY OF THE INVENTION

Appellant's invention comprises an assaying apparatus for collecting and analyzing a liquid sample, such as urine, for the presence or absence of a plurality of analytes such as drug metabolites in the liquid sample. The assaying apparatus provides

for automatic wicking of the liquid sample to an assay region of an assay strip isolated within an assay container once the liquid sample is introduced into the assaying container, providing a controlled flow of the liquid sample to the assay region of the assay strip.

The embodiment of the invention currently claimed is generally depicted in Figs. 4-5, and is described in the detailed description from page 8, line 17, to page 9, line 9. As is recited in Claim 15, the **assaying apparatus** (60) for collecting and analyzing a liquid sample for an analyte in the liquid sample includes a **container** (62) having an **interior sample chamber** (64) with a liquid sample space, and the **container** (62) has a surface defining an opening in communication with the **interior sample chamber** (64). The **assaying apparatus** (60) also includes a **cap** (68) adapted to be placed on the **container** (62) opening for closing the **container** (62) opening and sealing the **container** (62). An **assay strip** (70) is disposed in the **cap** (68), and the **assay strip** (70) has an **assay region** (72) disposed in the **cap** (68) for indicating the presence or absence of an analyte in a liquid sample placed in the liquid sample space of the **interior sample chamber** (64). The **cap** (68) includes a **separator member** (84) disposed between the **assay strip** (70) and the **interior sample chamber** (64) for separating the liquid sample space from the **assay region** (72) of the **assay strip** (70). A **wick** (78) is mounted to the **cap** (68) and extends into the liquid sample space of the **interior sample chamber** (64) when the **cap** (68) is placed on the **container** (62). The **wick** (78) is in fluid communication with the **assay strip** (70) for conducting a portion of the liquid sample from the **interior sample chamber** (64) to the **assay region** (72) of the **assay strip** (70). An **annular bridging**

wick piece (80) is located adjacent to and in fluid communication with the **wick** (78) and in immediate contact with the **assay strip** (70) for conducting the liquid sample from the **wick** (78) to the **assay strip** (70).

As is recited in Claim 16, the **assaying apparatus** (60) can have a **transparent cover** (82) over the **assay strip** (70) permitting observation of the results of the assay.

As is recited in Claim 18, the **assay strip** (70) can include **wicking material** (86) for conducting the liquid sample from the **wick** (78) to the **assay region** (72) of the **assay strip** (70).

As is recited in Claim 20, the **assaying apparatus** (60) for collecting and analyzing a liquid sample for the presence or absence of a plurality of analytes in the liquid sample includes a **container** (62) having an **interior sample chamber** (64) with a liquid sample space, and the **container** (62) has a surface defining an opening in communication with the **interior sample chamber** (64). The **assaying apparatus** (60) includes a **cap** (68) adapted to be placed on the **container** (62) opening for closing the **container** (62) opening and sealing the **container** (62). A plurality of **assay strips** (70) are disposed in the **cap** (68), with each **assay strip** (70) having an **assay region** (72) disposed in the **cap** (68) for indicating the presence or absence of one of a plurality of analytes in a liquid sample placed in the liquid sample space of the **interior sample chamber** (64). The **cap** (68) includes a **separator member** (84) disposed between the **assay strips** (70) and the **interior sample chamber** (64) for separating the liquid sample space from the **assay region** (72) of the **assay strips** (70). A **wick** (78) is mounted to the **cap** (68) and extends into the liquid sample space of the **interior sample chamber** (64).

when the **cap** (68) is placed on the **container** (62). The **wick** (78) is in fluid communication with the **assay strips** (70) for conducting a portion of the liquid sample from the **interior sample chamber** (64) to the **assay region** (72) of the **assay strips** (70). An **annular bridging wick piece** (80) is located adjacent to and in fluid communication with the **wick** (78) and in immediate contact with the **assay strips** (70) for conducting the liquid sample from the **wick** (78) to the **assay strips** (70).

As is recited in Claim 21, the assaying apparatus can include a **transparent cover** (82) over the **assay strips** (70) permitting observation of the results of the assays.

As is recited in Claim 23, the **assay strips** (70) include **wicking material** (86) for conducting the liquid sample from the **wick** (78) to the **assay regions** (72) of the **assay strips** (70).

VI. ISSUES ON APPEAL

A. THE EXAMINER'S REJECTIONS

In the final Office Action of June 2, 2004, Claims 15-16, 18, 20, 21 and 23 were rejected under 35 U.S.C. 103(a) on the grounds of obviousness from U.S. Patent No. 6,627,152 to Wong in view of U.S. Patent No. 6,168,758 to Forsberg et al. Wong was cited as disclosing a wick mounted to the cap and extending the liquid sample space of the interior sample chamber when the cap is placed on the container. Forsberg et al. was cited as disclosing a wicking pad 128 in contact with a wick 120 and that is used to bridge the wick 120 to an assay strip. The Examiner argued that it would have been obvious to modify Wong to include the liquid conveying system of Forsberg et al. to

facilitate liquid transport of a liquid sample to a test strip without flooding the test strip. Claims 15 and 20 recite "a container having an interior sample chamber with a liquid sample space," and "a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container." Claim 15 also recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip." Claim 20 similarly recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strips for conducting the liquid sample from said wick to said assay strips." In the Advisory Action of August 30, 2004, the Examiner argued that the prior art discloses each and every limitation in Claims 15-16, 18, 20, 21 and 23, and that "it is known in the art of test strips that annular bridge pieces are used to facilitate in [sic] liquid transport of th [sic] liquid sample to the test strip withou [sic] flooding the test strip."

B. THE ISSUES FOR DETERMINATION

In view of the Examiner's rejections and arguments, Appellant respectfully submits that the issues on appeal are as follows:

- 1) Whether the prior art cited discloses a wick mounted to the cap of a container and extending into the liquid sample space of the interior sample chamber when the cap is placed on the container, as is recited in Claims 15 and 20, so as to render the claims obvious under 35 U.S.C. §103.

2) Whether the prior art cited discloses an annular bridging wick piece adjacent to and in fluid communication with a wick, and in immediate contact with an assay strip or strips for conducting a liquid sample from the wick to the assay strip or strips, as is recited in Claims 15 and 20, so as to render the claims obvious under 35 U.S.C. §103.

VII. GROUPING OF CLAIMS

Claims 15-16, 18, 20, 21 and 23 stand or fall together.

VIII. ARGUMENTS

A. THE REJECTION OF CLAIMS 15-16, 18, 20, 21 AND 23 AS OBVIOUS

1. WONG AND FORSBERG ET AL. DO NOT DISCLOSE A CAP WITH TEST STRIP END PORTIONS EXTENDING INTO A CONTAINER INTERIOR SAMPLE CHAMBER LIQUID SAMPLE SPACE WHEN A CAP IS PLACED ON THE CONTAINER

Regarding the rejection of Claims 15-16, 18, 20, 21 and 23, it is respectfully submitted that Wong and Forsberg et al. do not teach, disclose or suggest test strip end

portions that extend into the liquid sample space of the interior sample chamber when the cap is placed on the container. Claims 15 and 20 recite "a container having an interior sample chamber with a liquid sample space," and "a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container."

Wong was cited as disclosing a wick that extends into a sample when the cap is on the container, and the Examiner referred to Fig. 8 of Wong. Fig. 8 of Wong shows a vessel 20 with fluid 130 in the vessel, and it is clear that the end portion 122 of each test strip 120 does not extend into the fluid 130 in the vessel. As is illustrated in Fig. 5 of Wong, and as described at column 4, lines 28-40, the end portion 122 of each test strip 120 exits through an exit port 90, and the end portions 122 and the exit ports 90 are surrounded by the rim 92 on the bottom side 78 of the cap. In Wong, the end portions 122 of each test strip do not extend into the liquid sample space 130 of the interior sample chamber 38 when the cap is placed on the container. As is described in Wong at column 3 line 50, to column 4, line 44, the carrier 50 is provided to bring liquid sample up to the test strip end portions 122, because the test strip end portions do not extend into the liquid sample space of the interior sample chamber when the cap is placed on the container.

Forsberg et al. was not cited as disclosing a wick that extends into a sample when the cap is on the container. Figs. 3 and 16 of Forsberg et al. show a container 25, 200, with a liquid sample 30, 202, with wicks 3, 120 in the cap and separated from the liquid sample space in the container by the base of a reservoir 18, and a wick chamber 118.

It is therefore respectfully submitted that Wong and Forsberg et al., taken either individually or in combination, do not teach, disclose or suggest wick mounted to the cap of a container and extending into the liquid sample space of the interior sample chamber when the cap is placed on the container, as is recited in Claims 15 and 20.

2. THE PRIOR ART CITED DOES NOT DISCLOSE AN
ANNULAR BRIDGING WICK PIECE ADJACENT TO AND
IN FLUID COMMUNICATION WITH A WICK, AND IN
IMMEDIATE CONTACT WITH AN ASSAY STRIP OR
STRIPS FOR CONDUCTING A LIQUID SAMPLE FROM
THE WICK TO THE ASSAY STRIP OR STRIPS

Claim 15 recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip." Claim 20 similarly recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strips for conducting the liquid sample from said wick to said assay strips."

Forsberg et al. was cited as disclosing a wicking pad 128 in contact with a wick 120 and that is used to bridge the wick 120 to an assay strip. The Examiner argued that it would have been obvious to modify Wong to include the liquid conveying system of Forsberg et al. to facilitate liquid transport of a liquid sample to a test strip without

flooding the test strip. It is respectfully submitted that Applicant has not claimed a liquid conveying system as disclosed in Forsberg et al. to facilitate liquid transport of a liquid sample to a test strip without flooding the test strip.

Forsberg et al. discloses a first rectangular wicking pad 128 mounted between wicks 120 and test strips 124 at one end of the test strips, and a second rectangular wicking pad 130 mounted in contact with the other ends of the test strips. In the Advisory Action of August 30, 2004, the Examiner argued that "it is known in the art of test strips that annular bridge pieces are used to facilitate in [sic] liquid transport of th [sic] liquid sample to the test strip withou [sic] flooding the test strip." The Examiner failed to cite any art whatsoever disclosing the claimed annular bridge piece.

It is further respectfully submitted that there is no disclosure, suggestion or motivation in Wong or Forsberg et al. to combine such an annular bridge piece with the end portions of the test strips of Wong or Forsberg et al. At column 13, lines 54-56, Forsberg et al. describes the second rectangular wicking pad as drawing liquid along the length of the test strips, and prevents flooding of the test strips. It is respectfully submitted that placement of the claimed annular bridging wick piece in contact with the end portions of the test strips of Wong or Forsberg et al. would not draw liquid along the length of test strips and prevent flooding of the test strips as suggested by the Examiner. Instead, the claimed annular bridging wick piece placed at the ends of the test strips in Wong or in Forsberg et al. would contact the test strips at portions of the test strips other than at the end portions of the test strips as well, and instead of drawing liquid along the test strips as in Forsberg et al., would deliver additional liquid sample to the test strips

and interfere with the operation of the test strips. It is therefore respectfully submitted that it would not have been obvious from Forsberg et al. to combine the claimed annular bridging wick piece in immediate contact with the wick of Wong, based upon the disclosure of a rectangular wicking pads 128 and 130 in Forsberg et al. It is respectfully submitted that Forsberg et al. does not teach, disclose or suggest an annular bridging wick piece adjacent to and in fluid communication with a wick, and in immediate contact with an assay strip for conducting a liquid sample from the wick to the assay strip, as is claimed.

It is therefore respectfully submitted that Wong and Forsberg et al., taken either individually or in combination, do not teach, disclose or suggest an annular bridging wick piece adjacent to and in fluid communication with a wick, and in immediate contact with an assay strip or strips for conducting a liquid sample from the wick to the assay strip or strips, as is recited in Claims 15 and 20.

IX. CONCLUSION

For the foregoing reasons, it is submitted that the present invention as claimed is not rendered obvious from Wong in view of U.S. Patent No. 6,168,758 to Forsberg et al., and that the Examiner's rejections of 15-16, 18, 20, 21 and 23 were therefore erroneous.

Appellant respectfully requests reversal of the rejection of 15-16, 18, 20, 21 and

23.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By: David G. Parkhurst
David G. Parkhurst
Reg. No. 29,422

DGP/rvw

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X. APPENDIX

CLAIMS ON APPEAL:

Claim 15. Assaying apparatus for collecting and analyzing a liquid sample for an analyte in the liquid sample, the apparatus comprising:

a container having an interior sample chamber with a liquid sample space, said container having a surface defining an opening in communication with said interior sample chamber;

a cap adapted to be placed on said container opening for closing said container opening and sealing said container;

an assay strip disposed in said cap, said assay strip having an assay region disposed in said cap for indicating the presence or absence of an analyte in a liquid sample placed in said liquid sample space of said interior chamber, and said cap including a separator member disposed between said assay strip and said interior sample chamber for separating said liquid sample space from said assay region of said assay strip;

a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container, said wick being in fluid communication with said assay strip for conducting a portion of the liquid sample from said interior chamber to said assay region of said assay strip; and

an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip.

Claim 16. The assaying apparatus of Claim 15, further comprising a transparent cover over said assay strip permitting observation of the results of the assay.

Claim 18. The assaying apparatus of Claim 15, wherein said assay strip comprises wicking material for conducting the liquid sample from said wick to said assay region of said assay strip.

Claim 20. Assaying apparatus for collecting and analyzing a liquid sample for the presence or absence of a plurality of analytes in the liquid sample, the apparatus comprising:

a container having an interior sample chamber with a liquid sample space, said container having a surface defining an opening in communication with said interior sample chamber;

a cap adapted to be placed on said container opening for closing said container opening and sealing said container;

a plurality of assay strips disposed in said cap, each assay strip having an assay region disposed in said cap for indicating the presence or absence of one of a plurality of analytes in a liquid sample placed in said liquid sample space of said interior chamber, and said cap including a separator member disposed between said assay strips and said interior sample chamber for separating said liquid sample space from said assay region of said assay strip;

a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container, said wick being in fluid communication with said assay strip for conducting a portion of the liquid sample from said interior chamber to said assay region of said assay strip; and

an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strips for conducting the liquid sample from said wick to said assay strips.

Claim 21. The assaying apparatus of Claim 20, further comprising a transparent cover over said assay strips permitting observation of the results of the assays.

Claim 23. The assaying apparatus of Claim 20, wherein said assay strips comprise wicking material for conducting the liquid sample from said wick to said assay regions of said assay strips.

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